good sign in this direction. If I am wrong in this, it is my view that a final order as to custody should only be determined within the context and framework of the proceedings for dissolution.

Under the circumstances I have no doubt that at least for the moment it would be to the best interest and welfare of the infants that custody of the infants should be vested with the respondent and I so order. Because there is no evidence that access to the children was ever denied to the applicant (the ceasure of visitations by the applicant at the end of 1973 being on his own volition) although there is some evidence that the respondent would insist on being present whenever the applicant wanted to take the infants anywhere for fear of being deprived of custody, I shall order that there shall be unrestricted access at all times. Guardianship of the infants will continue to remain with the applicant. By virtue of section 3 of the Guardianship of Infants Act, 1961 the guardian shall be responsible for the support, health and education of the infants and as such I shall make no specific order as to maintenance.

The costs of the application which shall be taxed shall be borne by the applicant.

Order accordingly.

Solicitors: *Lim Kean Chye & Co.; C.H. Liew & Co.*

PARAMASIVAM & ANOR. v. ABDUL AZIZ & ORS.

[O.C.J. (Mohamed Azmi J.) May 16, 1975]
[Kuala Lumpur — Civil Suit No. 1048 of 1971]

Damages — Liability agreed on a 50:50 basis — Damages awarded — Appeal against quantum.

Damages — Skin-grafting — Shortening of right leg — Deformity of foot.

On October 14, 1969, the first plaintiff aged seven years old, was knocked down by motor-bus No. BD2019 driven by the first defendant. It was agreed between the parties that liability was on a 50:50 basis.

As a result of the aforesaid accident, both the first plaintiff and his father, the second plaintiff suffered loss and expense. The first plaintiff endured much pain and suffering. He had to undergo skin-grafting and the donor areas left permanent ugly scars to the left leg and both thighs. His right leg and right foot suffered shortening and there were injuries to the toes including the loss of one toe. There was a likelihood that he might develop arthritis in his ankle joint and his right big toe and possibly pain in his right foot as a result of his deformities and injuries in the future.

Special damages in the sum of $3,400 for the first plaintiff and $650 for the second plaintiff based on a 100 per cent liability was agreed between the parties. The court awarded the first plaintiff the sum of $19,000 as general damages with interest. This was based on 50 per cent liability.

Held: the injuries were substantial having regard to the skin-graftings, shortening of the right leg and deformity of the right foot. Having regard to all the circumstances of the case, including the age of the boy, the amount awarded was fair and reasonable.

Cases referred to:-

(1) *Lee Han Siong* v. *Loh Mun Hon* [1970] 2 M.L.J. xx.

(2) *Lee Nya Chik & Anor.* v. *Koh Choon Ngoh* [1973] 1 M.L.J. xxviii.

CIVIL SUIT.

R.K. Nathan for the plaintiffs.

N.A. Marjoribanks for the defendants.

Mohamed Azmi J.: This is a claim for damages arising out of a motor accident that took place on October 14, 1969, when the first plaintiff, who was then seven years old, was knocked down by motor-bus No. BD 2019 driven by the first defendant. The second plaintiff, who is the father of the first plaintiff, only claims for special damages. It is not in dispute that as a result of the accident, the first plaintiff suffered injuries and that both the plaintiffs suffered loss and expenses. On liability, both parties have agreed that it should be apportioned on 50:50 basis. They have also agreed on quantum of special damages, namely, $3,400 for the first plaintiff and $650 for the second plaintiff based on 100 per cent liability.

The only issue to be decided in this case is, therefore, on quantum of general damages in respect of the first plaintiff. After hearing submissions by counsel for both parties and having seen the present condition of the boy, I consider a lump sum award of $38,000 in general damages based on 100 per cent liability is fair and reasonable. Based on 50 per cent liability, I entered judgment for the first plaintiff in the sum of $19,000 as general damages with interest. Defendants have now appealed against the quantum of general damages.

In arriving at my assessment on general damages, I took into consideration the following factors. Firstly, it was not in dispute that the plaintiff was seven years old at the time when he was knocked into by the bus driven by the first defendant. Secondly, he was hospitalised at Assunta Hospital from October 14 to December 26, 1969; after which, he was treated as an outpatient, during which time he must have endured much pain and suffering. On admission to the hospital, it was found that his right foot showed a severe avulsion injury with compound fracture of the bones of the foot including the ankle. Immediate operation was performed and the wound was excised and all devitalised tissues were removed. The foot was replaced in a semi-normal position. The main artery of the back of the foot was found to be severed and was ligated, although the main vessels on the sole of the foot were intact. It was then decided to try and save the foot which otherwise would have to be amputated. The boy had a severe convalescence and developed a very severe infection which eventually responded to several antibiotics. By November 17, 1969, it was possible to skin-graft the foot; and on December 4, remaining skin-grafts to the remaining areas were applied. After being discharged on December 26, he continued to receive medical treatment as an outpatient. During this period, he had been walking on a below-knee plaster and this was only removed on January 15, 1970. X-rays of the right foot revealed there was loss of the tarsus, i.e. the bones in front of the heel and behind the toes. There was a marked deformity of the foot with loss of tissue deep in the instep. One of his toes was missing and the soft tissues of the foot were abnormally shaped. The boy's present conditions as described in the Medical Report dated February 19, 1975 (Exhibit AB14) are as follows:

(1) He walks fairly normally with very slight evidence of a limp. He is able to stand on either foot alone and unaided and he is able to stand up on his toes.

(2) He has lost about 10 degrees of active dorsiflexion, i.e. bending the right foot upwards.

(3) He has lost practically all inward and outward rotation of the ankle joint.

(4) There is damage and shortening of three separate bones, namely, the right tibia or shin bone, lower half of the talus, i.e. the bone held in the mortice of the ankle joint, and the upper surface of the calcaneum, i.e. the heel bone. The combined damage of these three bones with their resultant deformities have produced a combined shortening of between half and three-quarters of an inch of the right leg.

(5) The right foot itself is shortened by $1\frac{3}{4}$ inches.

(6) The skin-graftings of the right foot have healed satisfactorily.

(7) The right foot is deformed.

(8) The right big toe is shorter by half an inch than the left.

(9) The right little toe is missing altogether and its associated metatarsal bone is greatly shortened.

(10) The three remaining toes, i.e. the second, third and fourth, are abnormally long by comparison.

(11) He has lost the three cuneiform bones, the navicular and most of the cuboid bones in the tarsus (i.e. middle of the right foot). He has also lost portion of his talus as well as portion of the calcaneum (the heel bone).

(12) The ankle joint is also disturbed, and the bone on the outside of the right ankle joint has joined prematurely and is shorter than the equivalent bone on the left ankle.

In arriving at the lump sum figure, I took into consideration the fact that the donor areas for the skin-graftings are quite substantial. Altogether there are three donor areas which have left permanent ugly scars to the left leg and both thighs; and having regard to the case of *Lee Han Siong* v. *Loh Mun Hon*,[1] I am of the view that damages under skin-graftings and the resultant scars should be in the region of $10,000 to $15,000. Apart from shortening of the right leg (the conventional figure for half an inch shortening being $5,000), I also took special consideration of the shortening of the right foot itself and injuries to the toes including the loss of one toe which with the other bone injuries and deformities should be assessed on the basis of a crushed foot. Under this item, I consider damages in the region of $20,000 to $25,000 as not unreasonable. I also took into consideration the outlook for the future. According to the Medical Report, he is more likely than normal to develop arthritis in his ankle joint and his right big toe and possibly pain in his foot as a result of his deformities and injuries when he is much older. As he is now only twelve years old, an award of about $2,000 would be adequate. As against this, I took into account that the skin-graftings of his right foot have healed satisfactorily, and that he is able to run around reasonably well although he is not expected to play games. In my assessment of damages in this case, I have considered the case of *Lee Nya Chik (m.w.) & Anor.* v. *Koh Choon Ngoh (f)*[2] where a married woman aged 40 suffered a fractured dislocation of the right ankle joint and other injuries, for which she was awarded $12,000 for pain and suffering and loss of amenities. In my view, the injuries in the present case are more substantial having regard to the skin-graftings, shortening of the right leg and total deformity of the right foot. Having regard to all the circumstances of this case, including the age of the boy, I consider the lump sum award of $38,000 for pain and suffering and loss of amenities on 100 per cent liability as fair and reasonable.

Accordingly, I entered judgment for the first plaintiff in the sum of $19,000 as general damages and as agreed a sum of $1,700 as special damages, and also as agreed I entered judgment for the second plaintiff in the sum of $325 as special damages. I also ordered interest to be paid by the defendants at 3 per cent per annum on the special damages from October 14, 1969 and at 6 per cent per annum on general damages from December 16, 1971 to date of judgment and costs.

Order accordingly.

Solicitors: *R.K. Nathan & Co.; Lovelace & Hastings.*